

COMMONWEALTH OF MASSACHUSETTS  
APPEALS COURT

NO. 2022-P-0962

D.A.R. No.

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COMMONWEALTH of MASSACHUSETTS,  
Appellee,

v.

PATRICK AMARA,  
Defendant-Appellant.

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ON APPEAL FROM A JUDGEMENT OF THE SUPERIOR COURT

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DEFENDANT-APPELLANT’S APPLICATION FOR DIRECT APPELLATE  
REVIEW

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**Request:**

The defendant-appellant Patrick Amara requests direct appellate review of his case which has been entered in the Appeals Court.

**Prior Proceedings:**

The defendant was charged in three indictments with the rape of “H,” a classmate at the University of Massachusetts at Amhurst. The defendant was tried before the Honorable Mark Mason and a jury from April 22, 2019, to April 29, 2019. The jury convicted the defendant on all three indictments. He was sentenced to concurrent terms of 5 years to 5 years and a day in state prison on two indictments, and to a consecutive probationary term of 3 years on the third indictment.

On December 28, 2020, appellate counsel filed a Motion for New Trial, alleging ineffective assistance of trial counsel. Oral arguments were heard on March 25, 2021. On May 4, 2021, Judge Mason allowed the defendant’s Motion for New Trial, finding that trial counsel failed to properly elicit and/or utilize exculpatory statements provided in discovery. The Commonwealth timely filed its notice of appeal.

On February 11, 2022, the Appeals Court heard oral arguments regarding the Commonwealth’s appeal. On April 28, 2022, the Appeals Court issued its decision,

vacating the allowance of the new trial motion and remanding the case to Judge Mason “for reconsideration, taking into account the memorandum and order of the Appeals Court.” On August 9, 2022, Judge Mason issued his order denying the motion for new trial. The defendant timely filed his notice of appeal and now requests direct appellate review.

### **Statement of Facts:**

#### ***The Incident***

In April 2016, the complaining witness, “H”, was a sophomore at the University of Massachusetts at Amherst. (Tr. April 24, 2019, p.36: 20-25.) On April 30, “H” prepared to attend party at an apartment in the neighboring town of Hadley. (Tr. April 24, 2019, p.39:1-5.) “H” planned to meet friends at the party, including her best friend, Maija Hall. (Tr. April 24, 2019, p.41: 1-16.)

After spending the day alone in her dormitory room, “H” arrived at the party by Uber at around 9pm. (Tr. April 24, 2019, p.38: 17-19, p.42:16.) In the living room, she observed the defendant sitting on the sofa with other guests, and noticed a few of his friends in the room, as well. (Tr. April 24, 2019, p.53:1-11.) “H” knew the defendant from mutual visits to a friend’s dorm room. (Tr. April 24, 2019, p.56:6-18.) “H” testified that she had nothing to drink prior to the party, and nothing to drink at the party prior to the alleged rape. (Tr. April 24, 2019, p.53:12-22.)

“H” sat down next to the defendant who “seemed really, really drunk,” “slurring and kind of like fading in and out of sleep or consciousness.” (Tr. April 24, 2019, p.59:9-17.) Eventually the defendant attempted to make his way to the bathroom, and “H” testified that she followed to assist him in case he vomited. (Tr. April 24, 2019, p.62:9-14.)

Once in the bathroom, the defendant moved towards the toilet, and “H” turned her back to him. (Tr. April 24, 2019, p.66:9-11.) The defendant then told “H” that he wanted to have sex with her and started pulling up her dress. (Tr. April 24, 2019, p.66:14-16.) She observed that his pants were down, and told him “No, you’re drunk, don’t do this.” (Tr. April 24, 2019, p.66:17-22.) The defendant positioned himself behind her, placed his hands on her back to push her down, and inserted his penis into her anus. (Tr. April 24, 2019, p.70-71:5-25, 1-2.) He then moved his penis to her vagina. (Tr. April 24, 2019, p.71:17-18.)

At some point, another guest knocked on the bathroom door. (Tr. April 24, 2019, p.72:18.) The defendant pulled up his pants, opened the door and told the guest that everything was fine. (Tr. April 24, 2019, p.72:23-25.) He then returned to “H” and again inserted his penis into her vagina. (Tr. April 24, 2019, p.75:14-16.) “H” eventually ran out of the bathroom towards the apartment’s front door. (Tr. April 24, 2019, p.76:21-23.)

At the front door, “H” encountered her best friend, Maija, and Maija’s boyfriend, Joshua Odom, arriving at the party. (Tr. April 24, 2019, p.78:3-11.) “H” pulled Maija to a nearby bathroom and told Maija “that she was forced to have sex.” (Tr. April 24, 2019, p.140:21-22, p.143:2-3.) She told Maija that her attacker was “Patrick.” (Tr. April 24, 2019, p.82: 9-13.) At “H’s” insistence, the two women eventually returned to the party. (Tr. April 24, 2019, p.82: 25.)

A few days after the party, “H” sent a text message to the defendant. (Tr. April 24, 2019, p.94: 2-13.) The defendant responded, confirming that he recalled having sex with “H,” but had no memory of her saying “no.” (Tr. April 24, 2019, p.98:1-19.) The defendant asked to talk with “H,” and the two met in a dormitory stairwell to discuss the incident. (Tr. April 24, 2019, p.99: 11-21.) The defendant told “H” that he recalled the sex was consensual but expressed concern for well-being and asked what he could do to make amends to her. (Tr. April 24, 2019, p.103: 17-22, p.131: 17-20.)

***Joshua Odom’s Statement to Investigators:***

In the fall of 2016, “H” disclosed the incident to a mandated reporter at the university. The jury did not hear the facts surrounding “H”’s disclosure to the school. They did, however, hear testimony regarding the university’s subsequent student conduct investigation, because the defendant participated in that investigation and gave a recorded statement that was presented during the

Commonwealth's case-in-chief. Jonathan Connary, the Assistant Dean of Students for Student Conduct at UMass Amherst, testified regarding his role as the assigned dean investigating the incident. Connary, along with Dean Christina Landeta-Burdick, interviewed numerous witnesses, including Joshua Odam. The report of that interview, conducted by Connary and Landeta-Burdick, is dated January 27, 2017, and was provided to the defense in the normal course of discovery. In the report, written by Landeta-Burdick, Odom recounts arriving at the party with Maija Hall, noticing Patrick and "H" 10-15 minutes later, and noting that "H" did not appear different than how she normally looks. The report states that "Josh shared as the night went on Maija shared with Josh that "H" told her something had happened between "H" and Patrick that lead Josh to believe something non-consensual occurred." Later in the evening,

"Maija and Josh went outside to talk. It was at this point Maija was able to tell Josh more details about what "H" had told her. Josh shared Maija told him that "H" and Patrick were both drinking and "H" was drunk. Josh shared Maija also told him that "H" and Patrick were having sex and when "H" asked Patrick to stop he did not."

**Issues of Law Raised by the Appeal:**

The issue of law raised by this appeal is whether the defendant's state and federal constitutional right to the effective assistance of counsel were violated by trial counsel's failure to read and/or utilize statements contained in Joshua Odam's interview report provided during discovery. This issue was raised in the defendant's Motion for New Trial.

**Argument:**

At the heart of the Commonwealth's case was the issue of consent, or lack thereof. In her closing argument, the prosecutor began by reminding the jury that "the only evidence that we did not hear throughout this trial is that there was no evidence of consent." At a trial in which there was seemingly no evidence to contradict the account of a sober victim unable to fend off her drunk rapist, Odam's interview casts the incident in a completely different light. The jury never heard about his statements, however, as defense counsel did not utilize the report. (Odam, Maija Hall and "H" all testified at trial.)

In support of the defendant's motion for new trial, trial counsel signed an affidavit stating that he did not recall reading the Odam report. At oral argument on the motion for new trial, defense counsel changed his account, stating that he had recently reviewed his trial binder and observed the Odam report inside the file, suggesting to him that he must have seen the report (but still could not recall having read it.)

On direct examination, Odam testified that he first noticed “H” approximately 30 minutes after arriving at the party. He subsequently had a conversation with his girlfriend, Maija. (The prosecutor instructed Odam not to describe that conversation, presumably to avoid a hearsay objection. Likewise, defense counsel objected during Maija’s testimony when she began to describe what she told Odam about her conversation with “H.”) Had trial counsel read the Odam interview report, he would likely have withheld his objection with an eye toward cross-examining her, and Odam, on this very subject, based on the statements in Odam’s interview.

1. *Odam’s statements directly contradict “H’s” claim that Amara forcibly attacked her in the bathroom.* “H” told the jury that after moving to use the toilet, Amara turned back to her, pulled up her dress, bent her forward and forced his penis into her anus. She further testified that she “was so afraid...was shocked...didn’t understand what was happening...felt paralyzed,” and “couldn’t move.” What Odam told investigators paints a very different picture: rather than Amara overpowering an unsuspecting and terrified “H”, Odam described an initially consensual sexual encounter. Not only does Odam’s statement offer a different version of events, but it also casts doubt on the veracity of “H’s” testimony.



2. *The statements directly contradict “H’s” claim that she had nothing to drink prior to the bathroom encounter.* Much was made of “H’s” supposed sobriety prior to the bathroom incident. The Commonwealth clearly sought to buttress the veracity of her account by highlighting her sobriety, as well as underscore the unbelievability that she would have been complicit in the sexual encounter. What the first-complaint witness told Odam, however, directly calls “H’s” claim of sobriety into question, as well as her credibility on the witness stand.
3. *The statements call into question the credibility of the first complaint witness and the veracity of her testimony at trial.* The Commonwealth’s case relied heavily on the corroboration of the first-complaint witness, Maija Hall. Odam’s statements cast substantial doubt on the veracity of hall’s testimony. On direct examination, Maija Hall testified in detail regarding “H’s” disclosure to her at the party. She corroborated “H’s” testimony that “she was forced to have sex.” Odam, however, told investigators that what “H” actually told Hall was quite different: that “H” and Amara were having sex, and that when “H” asked him to stop, he did not. Again, not only does Odam’s statement provide a completely different version of events, but casts doubt on the credibility of the first complaint witness.

4. *No other trial witnesses corroborate the defendant's claim that the sex was consensual.* Odam's statements are of critical importance to the defense because they are the *only* evidence that directly contradicts the testimony of the complaining and first complaint witnesses. Odam's statements are not cumulative, in that they aren't simply corroborative of other witness's testimony. That is why Odam's statements are particularly critical, and trial counsel's failure to identify and use them at trial so damaging. No other witness testified to knowledge that Amara did not attack "H." No other witness testified that "H" was intoxicated prior to the encounter.
5. *The statements arise from a "Commonwealth" witness.* Part of the value of Odam's statements arises from the fact of Odam himself: he is not a defendant-friendly witness, per se.

Trial counsel called 3 witnesses on behalf of the defendant. All 3 were friends and football teammates of the defendant. Their testimony, alone and in concert, lacked credibility and was largely ineffective. Odam, on the other hand, called by the Commonwealth, was the first complaint witness's boyfriend. The first complaint witness is the complaining witness's best friend. And at trial, Odam even described the complaining witness as a close personal friend.

***The Ineffective Assistance Standard:***

The defendant has a state and federal constitutional right to the effective assistance of trial counsel. An attorney, not unlike any other professional, is required to exercise the customary skill and knowledge which normally prevails at the time and place. See *Moore v. United States*, 432 F.2d 730, 736 (3rd Cir. 1970) (en banc). When defense counsel's performance falls measurably below that which might be expected of an ordinary fallible lawyer, and that performance is seriously prejudicial to the defense, then a violation of the defendant's rights has occurred. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Commonwealth v. Saferian*, 366 Mass. 89, 96 (1974) (whether there has been serious incompetency, inefficiency, or inattention of counsel—behavior of counsel falling measurably below that which might be expected from an ordinary fallible lawyer). To separate wheat from chaff—lapses of constitutional dimension from garden-variety missteps—a reviewing court must assess the gravity of the error and then consider potential justifications for the attorney's actions, given what he knew or should have known at each relevant moment in time. *Ouber v. Guarino*, 293 F.3d 19, 27-8, (1st Cir. 2002).

In the review for a substantial likelihood of a miscarriage of justice due to ineffective assistance of counsel, the courts consider whether the defendant has made "some showing that better work might have accomplished something material for the defense." See *Commonwealth v. Bell*, 460 Mass. 294, 303 (2011),

quoting *Commonwealth v. Johnson*, 435 Mass. 113, 123 (2001). *Commonwealth v. Alcide*, 472 Mass. 150, 158 (2015). In the case at bar, trial counsel failed to thoroughly prepare for a rape trial. The document at issue, an investigative report detailing the interview of Joshua Odam, was provided to the defense in the normal course of discovery. Trial counsel's failure to read the document, identify an exculpatory statement therein, and use that statement at trial during witness examination, is a grave error. "Suffice it to say that a reasonably competent attorney representing the defendant would have been expected to become familiar with the discovery materials produced by the Commonwealth." *Commonwealth v. Alcide*, 472 Mass. 150, 160 (2015).

In both his opening and closing statements, trial counsel advised the jury that this was "a story of consensual sex and regret." And yet the one piece of evidence that corroborated that assertion – the statement of a Commonwealth witness given during an investigative interview- was completely overlooked. As a result, "the defendant was denied a fair trial due to trial counsel's . . . failure to investigate and develop the evidence which could have supported the defendant's defense," *Commonwealth v. Farley*, 432 Mass. at 157, *Commonwealth v. Alcide*, 472 Mass. 150, 160 (2015).

Odam's statements were critical to the defense. They affirm the defendant's own statements (recorded and introduced at trial) and support the defendant's

theory of the case: the sex was consensual, at least when it began. This is an entirely different picture than that presented by the Commonwealth, in which the defendant is a violent aggressor. (The jury never had the opportunity to consider whether the complainant later withdrew her consent, as they never heard Odam's statements.) There is no reasonable explanation for not using the statements, and counsel's failure to read them in his review of the discovery is inexcusable.

**Statement of the Reason Why Direct Appellate Review is Appropriate:**

The Appeals Court has already considered this case and the issue on appeal in this matter: Following written motions and oral arguments from both parties, Judge Mark Mason allowed the defendant's Motion for New Trial. In his 15-page decision, Judge Mason found that trial counsel was ineffective in his failure to read and/or utilize the witness statements, provided to him in discovery, that could have undermined the alleged victim's credibility. He further found that "while failing to impeach a witness is rarely grounds for a new trial itself, in this case the witnesses' credibility was so central to the Commonwealth's case that trial counsel's failure to even familiarize himself with statements that could have undermined that credibility deprived Mr. Amara of a substantial ground of defense and, ultimately, denied him a fair trial."

In response to the Commonwealth's appeal of the allowance of the new trial motion, the Appeals Court issued an order vacating the allowance of the motion

but remanded the matter to Judge Mason for “reconsideration, taking into account the Appeals Court’s memorandum.” Prompted by the Appeals Court’s suggestion that he reconsider his ruling, Judge Mason issued his second decision, this time denying the defendant’s motion. This issue should be submitted for final determination to the Supreme Judicial Court.

Respectfully submitted,  
By his attorney,  
/s/ Kirsten M. O'Brien  
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APPEALS COURT

NO. 2022-P-0962

D.A.R. No.

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COMMONWEALTH of MASSACHUSETTS,  
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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 16(k) the defendant-appellant hereby certifies that this DAR application complies with the rules of court that pertain to the filing of DAR applications.

1. This brief has been prepared using 14 point, proportionately spaced Times New Roman font.
2. The Argument section contains 1,349 words.

Respectfully submitted,

/s/ Kirsten M. O'Brien

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Appellee,

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Defendant-Appellant.

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**CERTIFICATE OF SERVICE**

I, Kirsten M. O'Brien, hereby certify that on this 26<sup>th</sup> day of October 2022 I served an electronic copy of the defendant-appellant's DAR Application as follows:

Hampshire County ADA Cynthia Von Flatern: [cynthia.von.flatern@state.ma.us](mailto:cynthia.von.flatern@state.ma.us)  
Hampshire County ADA Jennifer Suhl: [jennifer.suhl@state.ma.us](mailto:jennifer.suhl@state.ma.us)  
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Respectfully submitted,

/s/ Kirsten M. O'Brien

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**1880CR00006 Commonwealth vs. Amara, Patrick**

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 01/23/2018
- DCM Track:
- C - Most Complex
- Initiating Action:
- RAPE c265 §22(b)
- Status Date:
- 02/22/2018
- Case Judge:
- 
- Next Event:
- 

All Information Party Charge Event Tickler Docket Disposition

**Party Information**

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- Prosecutor

Alias

**Party Attorney**

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[More Party Information](#)

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[More Party Information](#)

**Center for Women and Community**  
- Keeper of Record

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**Party Attorney**

[More Party Information](#)

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**Alias****Party Attorney**

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[More Party Information](#)**Party Charge Information**• **Amara, Patrick**

## • - Defendant

## Charge # 1:

265/22/A-1 - Felony RAPE c265 §22(b)

## • Original Charge

## • 265/22/A-1 RAPE c265 §22(b) (Felony)

## • Indicted Charge

## • Amended Charge

**Charge Disposition**

Disposition Date

Disposition

04/29/2019

Guilty Verdict

• **Amara, Patrick**

## • - Defendant

## Charge # 2:

265/22/A-1 - Felony RAPE c265 §22(b)

## • Original Charge

## • 265/22/A-1 RAPE c265 §22(b) (Felony)

## • Indicted Charge

## • Amended Charge

**Charge Disposition**

Disposition Date

Disposition

04/29/2019

Guilty Verdict

• **Amara, Patrick**

## • - Defendant

## Charge # 3:

265/22/A-1 - Felony RAPE c265 §22(b)

## • Original Charge

## • 265/22/A-1 RAPE c265 §22(b) (Felony)

## • Indicted Charge

## • Amended Charge

**Charge Disposition**

Disposition Date

Disposition

04/29/2019

Guilty Verdict

**Events**

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
02/22/2018 02:00 PM	Criminal 1	Courtroom 2	Arraignment	Carey, Hon. Richard J	Held as Scheduled



<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
07/27/2018 02:00 PM	Criminal 1	Courtroom 2	Pre-Trial Hearing	Carey, Hon. Richard J	Held as Scheduled
10/05/2018 02:00 PM	Criminal 1	Courtroom 2	Motion Hearing	Carey, Hon. Richard J	Rescheduled
10/30/2018 02:00 PM	Criminal 1	Courtroom 2	Hearing on Dwyer Motion	Carey, Hon. Richard J	Rescheduled
11/14/2018 02:00 PM	Criminal 1	Courtroom 2	Hearing on Dwyer Motion	Carey, Hon. Richard J	Rescheduled
11/28/2018 02:00 PM	Criminal 1	Courtroom 2	Hearing on Dwyer Motion	Carey, Hon. Richard J	Held as Scheduled
01/25/2019 02:00 PM	Criminal 1		Final Pre-Trial Conference		Held as Scheduled
02/06/2019 02:00 PM	Criminal 1		Trial Ready		Rescheduled
03/13/2019 02:00 PM	Criminal 1		Trial Ready	Mason, Hon. Mark D	Rescheduled
04/02/2019 02:00 PM	Criminal 1		Trial Ready	Mason, Hon. Mark D	Rescheduled
04/17/2019 02:00 PM	Criminal 1		Motion Hearing	Mason, Hon. Mark D	Held as Scheduled
04/22/2019 09:00 AM	Criminal 1		Jury Trial	Mason, Hon. Mark D	Held as Scheduled
04/23/2019 09:00 AM	Criminal 1		Jury Trial	Mason, Hon. Mark D	Held as Scheduled
04/24/2019 09:00 AM	Criminal 1		Jury Trial	Mason, Hon. Mark D	Held as Scheduled
04/25/2019 09:00 AM	Criminal 1		Jury Trial	Mason, Hon. Mark D	Held as Scheduled
04/29/2019 09:00 AM	Criminal 1		Jury Trial	Mason, Hon. Mark D	Held as Scheduled
05/02/2019 09:00 AM	Criminal 1		Hearing for Sentence Imposition	Mason, Hon. Mark D	Held as scheduled
03/25/2021 02:00 PM	Criminal 1	NTH - 3rd FL, CR 2 (SC)	Motion Hearing	Carey, Hon. Richard J	Held as Scheduled
11/17/2021 02:00 PM	Criminal 1	NTH - 3rd FL, CR 2 (SC)	Bail Hearing	Carey, Hon. Richard J	Not Held
11/23/2021 02:00 PM	Criminal 1	NTH - 3rd FL, CR 2 (SC)	Bail Hearing	Carey, Hon. Richard J	Held via Video/Teleconference
11/24/2021 10:45 AM	Criminal 1	NTH - 3rd FL, CR 2 (SC)	Bail Hearing	Carey, Hon. Richard J	Held via Video/Teleconference
12/02/2021 11:00 AM	Criminal 1	NTH - 3rd FL, CR 2 (SC)	Motion Hearing	Carey, Hon. Richard J	Held as Scheduled
04/06/2022 02:00 PM	Criminal 1	Courtroom 2	Conference to Review Status	Mason, Hon. Mark D	Held as Scheduled
06/16/2022 02:00 PM	Criminal 1	Courtroom 2	Conference to Review Status	Agostini, Hon. John A	Held as Scheduled
07/06/2022 02:00 PM	Criminal 1	Courtroom 2	Conference to Review Status	Carey, Hon. Richard J	Rescheduled
08/18/2022 02:00 PM	Criminal 1	Courtroom 2	Conference to Review Status	Carey, Hon. Richard J	Canceled

**Ticklers**

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Pre-Trial Hearing	02/22/2018	08/21/2018	180	07/27/2018
Final Pre-Trial Conference	02/22/2018	02/01/2019	344	01/25/2019

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Case Disposition	02/22/2018	02/15/2019	358	05/02/2019
Filings Due	03/25/2021	04/26/2021	32	04/26/2021
Filings Due	06/17/2022	07/25/2022	38	07/25/2022

**Docket Information**

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/23/2018	Indictment(s) returned	1	<a href="#">Image</a>
01/23/2018	Commonwealth 's Motion for an arrest warrant	2	<a href="#">Image</a>
02/22/2018	Attorney appearance On this date Jennifer Handel Suhl, Esq. added as Attorney for the Commonwealth for Prosecutor Hampshire County District Attorney	3	<a href="#">Image</a>
02/22/2018	Attorney appearance On this date John W Drake, Esq. added as Appointed - Indigent Defendant for Defendant Patrick Amara Appointment made for the purpose of Case in Chief by Judge Hon. Richard J Carey.	4	<a href="#">Image</a>
02/22/2018	Commonwealth 's Motion for Conditions of release	5	<a href="#">Image</a>
02/22/2018	Event Result: Judge: Carey, Hon. Richard J The following event: Arraignment scheduled for 02/22/2018 02:00 PM has been resulted as follows: Result: Held as Scheduled		
02/22/2018	Defendant arraigned before Court. Judge: Carey, Hon. Richard J		
02/22/2018	Defendant waives reading of indictment Judge: Carey, Hon. Richard J		
02/22/2018	Plea of not guilty entered on all charges. Judge: Carey, Hon. Richard J		
02/22/2018	Released on Personal Recognizance with the following conditions: Other Special Condition as agreed to contained in Commonwealth's Motion for conditions of release 1-8: 1) The defendant will not commit a federal, state or local crime during the period of release; 2) The defendant will report to the probation department by phone at least one time per week; 3) The defendant will surrender all passports and passport identification cards to the probation department and not seek a replacement; 4) The defendant will sign a waiver of extradition; 5) The defendant will have no contact, direct or indirect, with the alleged victim H.W. and will stay 100 yards away from HW at all times; 6) The defendant will stay away from the entire campus of the University of Massachusetts at Amherst; 7) The defendant will submit forthwith to a booking procedure at the Hadley Police Department; 8) Notify probation immediately of any changes of address or any other contact information.  Judge: Carey, Hon. Richard J		<a href="#">Image</a>
02/22/2018	Bail warnings read Judge: Carey, Hon. Richard J		
02/22/2018	Defendant 's Motion for funds for private investigator  Judge: Carey, Hon. Richard J	6	<a href="#">Image</a>
02/22/2018	Affidavit of Attorney Drake in Support of Motion for funds  Judge: Carey, Hon. Richard J	6.1	<a href="#">Image</a>
02/22/2018	Endorsement on Motion for funds , (#6.0): ALLOWED  Judge: Carey, Hon. Richard J		<a href="#">Image</a>
02/22/2018	Case assigned to: DCM Track C - Most Complex was added on 02/26/2018	7	<a href="#">Image</a>
02/26/2018	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: John W Drake, Esq.		



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/26/2018	Sent to Registry of Motor Vehicles, Department of Revenue and Department of Transitional Assistance:  Notice of Unpaid Legal Counsel Fees Sent On: 02/26/2018 09:32:29	8	
07/27/2018	Event Result: Trial month- February 6, 2019. FPTC - January 25, 2019 @ 2:00 PM. Dwyer/Discovery Motions- October 5, 2018 (Defendant's presence waived) Pre-Trial Hearing scheduled on: 07/27/2018 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. Richard J Carey, Presiding Appeared: Staff: Harry Jekanowski, Jr., Clerk of Courts  Judge: Carey, Hon. Richard J		
07/27/2018	Pre-trial conference report filed	9	<a href="#">Image</a>
09/14/2018	Defendant 's Motion for leave to subpoena treatment records pursuant to Commonwealth v Lampron	10	
09/14/2018	Affidavit of Attorney John Drake in Support of Motion for leave to subpoena treatment records pursuant to Commonwealth v. Lampron	10.1	
09/25/2018	Defendant 's Motion to Continue	11	<a href="#">Image</a>
09/25/2018	Endorsement on Motion to Continue, (#11.0): ALLOWED by agreement  Judge: Jekanowski, Jr., Harry		<a href="#">Image</a>
09/25/2018	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: John W Drake, Esq. Attorney: Jennifer Handel Suhl, Esq.		
09/25/2018	Event Result:: Motion Hearing scheduled on: 10/05/2018 02:00 PM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. Richard J Carey, Presiding Appeared: Staff: Harry Jekanowski, Jr., Clerk of Courts		
10/11/2018	Event Result:: Hearing on Dwyer Motion scheduled on: 10/30/2018 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Richard J Carey, Presiding Appeared: Staff: Harry Jekanowski, Jr., Clerk of Courts		
11/08/2018	Attorney appearance On this date Katrina Rose Eberly, Esq. added as Special Appearance for Other interested party Victim Rights Law Center	12	<a href="#">Image</a>
11/09/2018	Other 's Motion in Opposition to Defendant's Motion for leave to subpoena treatment records pursuant to Comm. v. Lampron	13	
11/14/2018	Event Result:: Hearing on Dwyer Motion scheduled on: 11/14/2018 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Richard J Carey, Presiding Appeared: Staff: Harry Jekanowski, Jr., Clerk of Courts		
11/15/2018	School Records received from University of Massachusetts Amherst		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/28/2018	Event Result:: Defendant's Motion for leave to subpoena treatment records (#10) Denied as to Center for Counseling and Psychological Health. Motion allowed as to Center for Women and Community for 10/1/16 records (see order). Note Motion #10, Affidavit #10.1 and Victim Witness' Opposition #13 to be impounded  Hearing on Dwyer Motion scheduled on: 11/28/2018 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. Richard J Carey, Presiding Appeared: Staff: Harry Jekanowski, Jr., Clerk of Courts  Judge: Carey, Hon. Richard J  Judge: Carey, Hon. Richard J		
11/28/2018	Opposition to Defendant's Motion for leave to subpoena treatment records filed by Hampshire County District Attorney	14	<a href="#">Image</a>
11/28/2018	Endorsement on Motion for leave to subpoena Treatment records, (#10.0): Other action taken Motion denied as to Center for Counseling and Psychological Health. Motion allowed as to Center for Women and Community for 10/1/16 records (See Order)  Judge: Carey, Hon. Richard J		<a href="#">Image</a>
11/28/2018	Finding by Court: Allowing Motion for Production of Documents pursuant to Rule 17(a)(2)  Judge: Carey, Hon. Richard J	15	<a href="#">Image</a>
11/29/2018	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: John W Drake, Esq. Attorney: Jennifer Handel Suhl, Esq. Attorney: Katrina Rose Eberly, Esq.		
11/29/2018	Notice and Summons (Dwyer) issued to Keeper of Records, Center for Women and Community to produce privileged records by 12/21/2018 to the Clerk of the Superior Court.  Judge: Carey, Hon. Richard J	16	<a href="#">Image</a>
12/20/2018	Other Records received from Center for Women and Community		
12/21/2018	Protective Order issued for defense counsel access to presumptively privileged records.  Judge: Carey, Hon. Richard J	17	<a href="#">Image</a>
01/25/2019	Event Result: FPTC- February 6, 2019 trial list. Final Pre-Trial Conference scheduled on: 01/25/2019 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. Daniel Ford, Presiding Appeared: Staff: Harry Jekanowski, Jr., Clerk of Courts		
01/25/2019	Joint Pre-Trial Memorandum filed:	18	<a href="#">Image</a>
01/25/2019	Commonwealth 's Motion for protective order (February 15-25, 2019)	19	<a href="#">Image</a>
01/25/2019	Affidavit of ADA Suhl in Support of Motion for Protective Order	19.1	<a href="#">Image</a>
02/06/2019	Event Result:: At call of list - Commonwealth and Defense motions for protective order allowed, continued to March 2019 list by agreement  Trial Ready scheduled on: 02/06/2019 02:00 PM Has been: Rescheduled For the following reason: Other event activity needed Comments: FTR Hon. Richard J Carey, Presiding Appeared: Staff: Harry Jekanowski, Jr., Clerk of Courts		
02/06/2019	Defendant 's Motion for protective order (2/28/19-3/1/19)  Applies To: Drake, Esq., John W (Attorney) on behalf of Amara, Patrick (Defendant); Suhl, Esq., Jennifer Handel (Attorney) on behalf of Hampshire County District Attorney (Prosecutor)	20	<a href="#">Image</a>



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/06/2019	Affidavit of Attorney Drake in Support of Motion for protective order  Applies To: Drake, Esq., John W (Attorney) on behalf of Amara, Patrick (Defendant); Suhl, Esq., Jennifer Handel (Attorney) on behalf of Hampshire County District Attorney (Prosecutor)	20.1	<a href="#">Image</a>
02/06/2019	Endorsement on Motion for protective order, (#19.0): ALLOWED  Judge: Carey, Hon. Richard J		<a href="#">Image</a>
02/06/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: John W Drake, Esq. Attorney: Jennifer Handel Suhl, Esq.		
02/06/2019	Endorsement on Motion for protective order, (#20.0): ALLOWED  Judge: Carey, Hon. Richard J Applies To: Drake, Esq., John W (Attorney) on behalf of Amara, Patrick (Defendant); Suhl, Esq., Jennifer Handel (Attorney) on behalf of Hampshire County District Attorney (Prosecutor)		<a href="#">Image</a>
02/06/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: John W Drake, Esq. Attorney: Jennifer Handel Suhl, Esq.		
03/13/2019	Attorney appearance On this date Erin Aiello, Esq. added for Prosecutor Hampshire County District Attorney	21	<a href="#">Image</a>
03/13/2019	Commonwealth's Motion for protective order (March 18, 2019, March 28, 2019 - March 29, 2019)	22	<a href="#">Image</a>
03/13/2019	Affidavit of ADA Jennifer Handel Suhl in support of Commonwealth's motion for protective order	22.1	<a href="#">Image</a>
03/13/2019	Commonwealth, Defendant's Joint Motion for a trial date certain in April 2019	23	<a href="#">Image</a>
03/13/2019	Event Result: Call of list - Trial date certain, Monday April 22, 2019 @ 9:00 AM (no trial on 3/25/19 & 3/26/19) 4 - 5 days. Motions in limine/Atty. assented voir dire questions 04/17/19 @ 2:00 PM. Trial Ready scheduled on: 03/13/2019 02:00 PM Has been: Rescheduled For the following reason: Other event activity needed Comments: FTR Hon. Mark D Mason, Presiding Appeared: Staff: Harry Jekanowski, Jr., Clerk of Courts		
04/02/2019	Event Result:: At call of list - Jury Trial 4/22/19 @ 9 AM (5 1/2 days +)  Trial Ready scheduled on: 04/02/2019 02:00 PM Has been: Rescheduled For the following reason: Other event activity needed Comments: FTR Hon. Mark D Mason, Presiding Appeared: Staff: Harry Jekanowski, Jr., Clerk of Courts		
04/12/2019	Defendant's Motion for requested to preclude the use of the words "victim", "assault" and rape	24	<a href="#">Image</a>
04/12/2019	Defendant's Motion for individual voir dire	25	<a href="#">Image</a>
04/12/2019	Defendant's Motion for Attorney-conducted voir dire	26	<a href="#">Image</a>
04/12/2019	Defendant's Submission of condensed questions to be posed to potential jurors by Defendant's Counsel	27	<a href="#">Image</a>
04/12/2019	Defendant's Motion in limine to sequester witnesses	28	<a href="#">Image</a>
04/12/2019	Commonwealth's Motion in limine to admit evidence of a "first complaint"	29	<a href="#">Image</a>
04/12/2019	Commonwealth's Motion in limine to allow in court identification	30	<a href="#">Image</a>
04/12/2019	Commonwealth's Motion in limine to exclude evidence prohibited by the Rape Shield Statute, G.L. c. 233 sect. 21B	31	<a href="#">Image</a>
04/12/2019	Commonwealth's Request for individual court-conducted voir dire	32	<a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/12/2019	Commonwealth 's Request for attorney-conducted panel voir dire	33	<a href="#">Image</a>
04/12/2019	Defendant 's Motion to conduct a voir dire of "first complaint" witness	34	<a href="#">Image</a>
04/17/2019	Event Result:: Hearing on Motions in Limine held. Trial 4/22/19 @ 9 AM empanelment only  Motion Hearing scheduled on: 04/17/2019 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
04/17/2019	Witness list  Applies To: Amara, Patrick (Defendant)	35	<a href="#">Image</a>
04/17/2019	Endorsement on Motion to preclude the use of the words "victim", "assault" and "rape", (#24.0): Other action taken The Commonwealth and the alleged victim may utilize the terms "assault" and "rape". In other respects the motion is Allowed.		<a href="#">Image</a>
04/17/2019	Endorsement on Motion for individual voir dire, (#25.0): Other action taken Rulings on record		<a href="#">Image</a>
04/17/2019	Endorsement on Motion for attorney-conducted voir dire, (#26.0): Reserved		<a href="#">Image</a>
04/17/2019	Endorsement on Submission of Condensed questions to be posed to potential jurors by Defendant's counsel, (#27.0): Other action taken Rulings on the record		<a href="#">Image</a>
04/17/2019	Endorsement on Motion in limine to sequester witnesses, (#28.0): ALLOWED without objection		<a href="#">Image</a>
04/17/2019	Endorsement on Motion in limine to admit evidence of a "first complaint", (#29.0): ALLOWED		<a href="#">Image</a>
04/17/2019	Endorsement on Motion in limine to allow in court identification, (#30.0): ALLOWED without objection		<a href="#">Image</a>
04/17/2019	Endorsement on Motion in limine to exclude evidence prohibited by the Rape Shield Statute, G.L. c. 233 sect. 21B, (#31.0): ALLOWED without objection		<a href="#">Image</a>
04/17/2019	Endorsement on Submission of request for individual court-conducted voir dire, (#32.0): ALLOWED without objection  Judge: Mason, Hon. Mark D		<a href="#">Image</a>
04/17/2019	Endorsement on Request for Attorney-conducted panel voir dire, (#33.0): ALLOWED without objection		<a href="#">Image</a>
04/17/2019	Endorsement on Motion to conduct a voir dire of "first complainant witness", (#34.0): DENIED The 1st complainant witness' testimony will be restricted as I have set forth on record.		<a href="#">Image</a>
04/18/2019	Witness list  Applies To: Suhl, Esq., Jennifer Handel (Attorney) on behalf of Hampshire County District Attorney (Prosecutor)	36	<a href="#">Image</a>
04/22/2019	Event Result:: Jury Trial scheduled on: 04/22/2019 09:00 AM Has been: Held as Scheduled Comments: FTR/ Adams Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
04/22/2019	Impanelment of jurors on this date  Judge: Mason, Hon. Mark D		
04/23/2019	Event Result:: Jury Trial scheduled on: 04/23/2019 09:00 AM Has been: Held as Scheduled Comments: FTR (Adams) Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/23/2019	Impanelment of jurors on this date  Judge: Mason, Hon. Mark D		
04/23/2019	Defendant 's Motion in limine to introduce evidence (Along with Exhibits 1-3 which are impounded)	37	<a href="#">Image</a>
04/23/2019	Endorsement on Motion in limine to introduce evidence, (#37.0): DENIED without prejudice. Rulings on Record		<a href="#">Image</a>
04/24/2019	Event Result:: Jury Trial scheduled on: 04/24/2019 09:00 AM Has been: Held as Scheduled Comments: FTR (Foulks) Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
04/25/2019	Event Result:: Jury Trial scheduled on: 04/25/2019 09:00 AM Has been: Held as Scheduled Comments: FTR (Foulks) Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
04/25/2019	Request for Jury instructions filed by Prosecutor Hampshire County District Attorney	38	<a href="#">Image</a>
04/25/2019	Defendant 's Request for jury charge	39	<a href="#">Image</a>
04/25/2019	Request for Jury instructions filed by Defendant Patrick Amara	40	<a href="#">Image</a>
04/25/2019	Endorsement on Request for jury instructions, (#38.0): ALLOWED as amended above		<a href="#">Image</a>
04/25/2019	Endorsement on Request for jury charge, (#39.0): Other action taken I will give the model - no objection		<a href="#">Image</a>
04/25/2019	Defendant 's Motion for requiring finding of not guilty	41	<a href="#">Image</a>
04/25/2019	Endorsement on Motion for requiring finding of not guilty , (#41.0): DENIED Rulings on the record		<a href="#">Image</a>
04/29/2019	Event Result:: Jury Trial scheduled on: 04/29/2019 09:00 AM Has been: Held as Scheduled Comments: FTR (Marzano) Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
04/29/2019	Endorsement on Request for jury instructions, (#40.0): DENIED Rulings on record.		<a href="#">Image</a>
04/29/2019	Defendant 's Motion for requiring finding of not guilty	42	<a href="#">Image</a>
04/29/2019	Endorsement on Motion for requiring finding of not guilty , (#42.0): DENIED Rulings on record		<a href="#">Image</a>
04/29/2019	Verdict affirmed, verdict slip filed  Ct. 1: Guilty; Ct. 2: Guilty; Ct. 3 Guilty	43	<a href="#">Image</a>
04/29/2019	Offense Disposition:: Charge #1 RAPE c265 §22(b) On: 04/29/2019 Judge: Hon. Mark D Mason By: Jury Trial Guilty Verdict  Charge #2 RAPE c265 §22(b) On: 04/29/2019 Judge: Hon. Mark D Mason By: Jury Trial Guilty Verdict  Charge #3 RAPE c265 §22(b) On: 04/29/2019 Judge: Hon. Mark D Mason By: Jury Trial Guilty Verdict		
04/29/2019	List of jurors filed.	44	<a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/29/2019	The defendant\petitioner is committed without bail for the following reason: Per Order of the Court.	45	<a href="#">Image</a>
04/29/2019	Habeas Corpus for defendant issued to Hampshire Jail returnable for 05/02/2019 09:00 AM Hearing for Sentence Imposition. Please transport defendant by 1:45 PM	46	<a href="#">Image</a>
04/30/2019	General correspondence regarding Jury Thank You Letters sent 4/30/2019		<a href="#">Image</a>
04/30/2019	List of exhibits	47	<a href="#">Image</a>
05/01/2019	Hampshire County District Attorney's Memorandum Sentencing	48	<a href="#">Image</a>
05/01/2019	Patrick Amara's Memorandum for Sentencing	49	<a href="#">Image</a>
05/02/2019	Event Result:: Hearing for Sentence Imposition scheduled on: 05/02/2019 09:00 AM Has been: Held as scheduled Comments: FTR Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
05/02/2019	Defendant sentenced:: Sentence Date: 05/02/2019 Judge: Hon. Mark D Mason  Charge #: 1 RAPE c265 §22(b) State Prison Sentence Not Less Than: 5 Years, 0 Months, 0 Days Not More Than: 5 Years, 0 Months, 1 Days  Charge #: 3 RAPE c265 §22(b) State Prison Sentence Not Less Than: 5 Years, 0 Months, 0 Days Not More Than: 5 Years, 0 Months, 1 Days Served Concurrently Charge # 1 Case 1880CR006  Committed to MCI - Cedar Junction (at Walpole) Credits 3 Days		
05/02/2019	Date: 05/02/2019 Judge: Hon. Mark D Mason  Charge #: 2 RAPE c265 §22(b) Served Consecutively Charge # 1  Probation: Risk/Need Probation Duration: 3 Years, 0 Months, 0 Days		
05/02/2019	Defendant is subject to the following special conditions:  1) register as sex offender; 2) Complete sex offender treatment and any other counseling; 3) substance abuse evaluation and treatment; 4) remain alcohol free with random screens; 5) stay away have no contact with named victim; 6) abide by any outstanding restraining orders; 7) provide DNA sample - fee waived  Judge: Mason, Hon. Mark D		
05/02/2019	Notice given to defendant of duty to register as a sex offender. Judge: Mason, Hon. Mark D		
05/02/2019	Defendant warned as to submission of DNA G.L. c. 22E, § 3 Judge: Mason, Hon. Mark D		
05/02/2019	Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days. Judge: Mason, Hon. Mark D		
05/02/2019	Defendant notified of right of appeal to the Appeals Court within thirty (30) days. Judge: Mason, Hon. Mark D		
05/02/2019	Issued on this date:  Mittimus for Sentence (All Charges) Sent On: 05/02/2019 10:14:35	50	<a href="#">Image</a>
05/06/2019	Notice of appeal filed.  Applies To: Amara, Patrick (Defendant)	51	<a href="#">Image</a>
05/06/2019	Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant  Applies To: Amara, Patrick (Defendant)	52	<a href="#">Image</a>



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/06/2019	Notification to the Appellate Division sent.		
05/06/2019	Attorney John W Drake, Esq.'s motion to withdraw as counsel of record for party and for appointment of Appellate Counsel  Applies To: Amara, Patrick (Defendant)	53	<a href="#">Image</a>
05/06/2019	Document:  Letter to the Appellate Division Sent On: 05/06/2019 10:39:09	54	<a href="#">Image</a>
05/07/2019	Docket Note: Notice of Appeal from Sentence received from MCI Cedar Junction from Defendant (dated 5/2/19) Attorney for the Defendant filed Notice of Appeal from Sentence on 5/6/19  Applies To: Amara, Patrick (Defendant)		
05/09/2019	Sent to Registry of Motor Vehicles, Department of Revenue and Department of Transitional Assistance:  Notice of Paid Legal Counsel Fee Sent On: 05/09/2019 11:29:08		
06/25/2019	Attorney appearance On this date Deborah Bates Riordan, Esq. added as Appointed - Appellate Action for Defendant Patrick Amara	55	<a href="#">Image</a>
09/06/2019	Defendant 's Motion for funds for Trial Transcript	56	<a href="#">Image</a>
09/06/2019	CD of Transcript of 04/17/2019 02:00 PM Motion Hearing, 04/22/2019 09:00 AM Jury Trial, 04/23/2019 09:00 AM Jury Trial, 04/24/2019 09:00 AM Jury Trial, 04/25/2019 09:00 AM Jury Trial, 04/29/2019 09:00 AM Jury Trial, 05/02/2019 09:00 AM Hearing for Sentence Imposition received from Attorney John Drake (Transcriber - Geri Parisi).	57	
09/06/2019	Endorsement on Motion for funds for trial transcript, (#56.0): ALLOWED		<a href="#">Image</a>
09/06/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: John W Drake, Esq.		
09/09/2019	Appeal: Statement of the Case on Appeal (Cover Sheet).	58	<a href="#">Image</a>
09/09/2019	Notice of assembly of record sent to Counsel	59	<a href="#">Image</a>
09/09/2019	Notice to Clerk of the Appeals Court of Assembly of Record	60	<a href="#">Image</a>
09/09/2019	General correspondence regarding Copy Transcription order from Attorney Riordan via fax (includes order for 11/28/18 transcript)	61	<a href="#">Image</a>
09/16/2019	Notice of docket entry received from Appeals Court On 9/16/19: "Re:#4: Appellate proceedings stayed to 10/26/19. Status report due then concerning completion of transcript."	62	<a href="#">Image</a>
10/04/2019	Appeal for review of sentence entered at the Appellate Division: Originating Court: Hampshire County Receiving Court: Suffolk County Criminal Case Number: 1984AD347-HS ;		
10/17/2019	Notice of docket entry received from Appeals Court "Re: #5 As the remaining transcripts have been produced, the trial court is to transmit them to this court upon receipt. The stay of appellate proceedings is vacated. The defendant's brief and appendix are due on or before 11/25/19	63	<a href="#">Image</a>
10/18/2019	CD of Transcript of 11/28/2018 02:00 PM Hearing on Dwyer Motion, 01/25/2019 02:00 PM Final Pre-Trial Conference received from Marsha Johnson Court Reporter.	64	
06/01/2020	Notice of docket entry received from Appeals Court On 5/29/2020 "Re: #11: Allowed. The appellant is granted leave to file, and the trial court is granted leave to consider, a motion for new trial. Appellate proceedings stayed to 8/3/20. Status report due then confirming filing of said motion on the trial court and any disposition thereof."	65	<a href="#">Image</a>
08/24/2020	Notice of docket entry received from Appeals Court On 8/21/20: "Re:#12: Appellate proceedings stayed until 9/21/20. Status report due then confirming filing of said motion in the trial court and any disposition thereof."	66	<a href="#">Image</a>
10/26/2020	Attorney appearance On this date Deborah Bates Riordan, Esq. dismissed/withdrawn as Appointed - Appellate Action for Defendant Patrick Amara		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/26/2020	Attorney appearance On this date John W Drake, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Patrick Amara		
10/26/2020	Attorney appearance On this date Kirsten M O'Brien, Esq. added as Private Counsel for Defendant Patrick Amara	67	<a href="#">Image</a>
12/28/2020	Defendant 's Motion for new trial and incorporated memorandum of law	68	<a href="#">Image</a>
12/28/2020	Affidavit of Patrick Amara in support of motion for new trial.	68.1	<a href="#">Image</a>
12/28/2020	Affidavit of of John Drake, Esquire in support of motion for new trial	68.2	<a href="#">Image</a>
01/07/2021	Endorsement on Motion for new trial , (#68.0): Other action taken Commonwealth is to file and serve its opposition to defendant's motion for new trial by February 26, 2021.  Judge: Mason, Hon. Mark D		<a href="#">Image</a>
01/07/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Kirsten M O'Brien, Esq. Law Office of Robert Sheketoff One McKinley Square 3rd Floor, Boston, MA 02109 Prosecutor, Attorney: Jennifer Handel Suhl, Esq. Northwestern District Attorney's Office One Gleason Plaza, Northampton, MA 01060 Prosecutor, Attorney: Erin Aiello, Esq. Northwestern District Attorney's Office One Gleason Plaza, Northampton, MA 01060  E'mailed to Attorneys		
02/26/2021	Opposition to to Defendant's Motion for New Trial (#68) filed by Hampshire County District Attorney	69	<a href="#">Image</a>
03/04/2021	Habeas Corpus for defendant issued to MCI - Concord returnable for 03/25/2021 02:00 PM Motion Hearing. Via zoom video conference  Meeting ID: 161 1130 6267 Passcode: 524682	70	<a href="#">Image</a>
03/25/2021	Event Result:: Motion Hearing scheduled on: 03/25/2021 02:00 PM Has been: Held as Scheduled Comments: Via Zoom  FTR Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
03/25/2021	List of exhibits  from Motion for New trial	70.1	<a href="#">Image</a>
04/06/2021	Sentence appeal withdrawn by Defendant  Applies To: Amara, Patrick (Defendant)		
04/22/2021	Commonwealth 's Supplemental Opposition to Defendant's Motion for New Trial	71	<a href="#">Image</a>
04/26/2021	Defendant 's Supplemental Motion in Support of Motion for New Trial	72	<a href="#">Image</a>
05/04/2021	Endorsement on Motion for new trial , (#68.0): ALLOWED See decision and order, filing #73  Judge: Mason, Hon. Mark D		<a href="#">Image</a>
05/04/2021	ORDER: Decision and Order on Defendant's Motion for New Trial  Judge: Mason, Hon. Mark D	73	<a href="#">Image</a>
05/05/2021	Defendant Kirsten M O'Brien, Esq.'s Motion for bail hearing	74	<a href="#">Image</a>
05/05/2021	Affidavit of of Kirsten O'Brien in support of defendant's motion for bail hearing	74.1	<a href="#">Image</a>
05/05/2021	Notice of appeal filed.  Applies To: Hampshire County District Attorney (Prosecutor)	75	<a href="#">Image</a>



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/06/2021	Endorsement on Motion for bail hearing, (#74.0): No Action Taken at this time pending resolution of ICE detainer  Judge: Agostini, Hon. John A		<a href="#">Image</a>
06/29/2021	CD of Transcript of 03/25/2021 02:00 PM Motion Hearing received from Paula Pietrella.	76	
06/30/2021	Notice of assembly of record sent to Counsel	77	<a href="#">Image</a>
06/30/2021	Appeal: Statement of the Case on Appeal (Cover Sheet).	78	<a href="#">Image</a>
06/30/2021	Notice to Clerk of the Appeals Court of Assembly of Record	79	<a href="#">Image</a>
11/05/2021	Habeas Corpus for defendant issued to MCI - Concord returnable for 11/17/2021 02:00 PM Bail Hearing. Please transport by 1:45 PM	80	<a href="#">Image</a>
11/16/2021	Defendant 's Motion for release pending appeal with affidavits in support of	81	<a href="#">Image</a>
11/17/2021	Event Result:: Bail Hearing scheduled on: 11/17/2021 02:00 PM Has been: Not Held For the following reason: Joint request of parties Hon. Richard J Carey, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
11/19/2021	Habeas Corpus for defendant issued to MCI - Concord returnable for 11/23/2021 02:00 PM Bail Hearing. HEARING TO BE CONDUCTED VIA ZOOM: <a href="https://www.zoomgov.com/j/1617416706?pwd=RXBtL3FBL1pEYmtuK0JtSkZnSm1WUT09">https://www.zoomgov.com/j/1617416706?pwd=RXBtL3FBL1pEYmtuK0JtSkZnSm1WUT09</a> Meeting ID: 161 741 6706 Passcode: 907549	82	<a href="#">Image</a>
11/23/2021	Opposition to Defendant's Motion for Release pending appeal filed by Hampshire County District Attorney(Exhibits not scanned)	83	<a href="#">Image</a>
11/23/2021	Habeas Corpus for defendant issued to MCI - Concord returnable for 11/24/2021 10:45 AM Bail Hearing. <a href="https://www.zoomgov.com/j/1617416706?pwd=RXBtL3FBL1pEYmtuK0JtSkZnSm1WUT09">https://www.zoomgov.com/j/1617416706?pwd=RXBtL3FBL1pEYmtuK0JtSkZnSm1WUT09</a> Meeting ID: 161 741 6706 Passcode: 907549	84	<a href="#">Image</a>
11/23/2021	Event Result:: Bail Hearing scheduled on: 11/23/2021 02:00 PM Has been: Held via Video/Teleconference Comments: Zoom / FTR Hampden Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
11/24/2021	Event Result:: Bail Hearing scheduled on: 11/24/2021 10:45 AM Has been: Held via Video/Teleconference Comments: Zoom/ FTR Hampden Courtroom 6 Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
11/24/2021	Finding and Order on Bail:  Judge: Mason, Hon. Mark D	85	<a href="#">Image</a>
11/24/2021	Bail set at \$25,000.00 Surety, \$2,500.00 Cash. Defendant to be held until GPS in place.  Judge: Mason, Hon. Mark D		
11/24/2021	Conditions of release on bail: Other Special Condition Establish and maintain a residence in Massachusetts with Adam Tucker at 131 Commonwealth Avenue, Apt. 3, Boston; Do not leave the Commonwealth of Massachusetts; GPS Monitoring with 9PM - 6AM curfew; stay away and have no contact, direct or indirect with the complainant (HW) or any witness in the case; surrender all passports and not seek a replacement; sign a waiver of extradition; check into probation at least once a week in a manner determined by probation (Phone, Zoom or in person)		
11/24/2021	Issued on this date:  Mittimus in Lieu of Bail Sent On: 11/24/2021 11:13:26		<a href="#">Image</a>
11/24/2021	ORDER: Remand	87	<a href="#">Image</a>
11/24/2021	ORDER: on Stayed Sentence	88	<a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/29/2021	Habeas Corpus for defendant issued to Hampshire Jail returnable for 12/02/2021 11:00 AM Motion Hearing. Please transport defendant by 10:45 AM	89	<a href="#">Image</a>
12/02/2021	Event Result:: In person waiver of extradition and bail posting. Motion Hearing scheduled on: 12/02/2021 11:00 AM Has been: Held as Scheduled Comments: FTR / in person Hon. Richard J Carey, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
12/02/2021	Waiver of extradition and release filed and executed in front of Judge after colloquy.  Judge: Carey, Hon. Richard J Applies To: O'Brien, Esq., Kirsten M (Attorney) on behalf of Amara, Patrick (Defendant); Suhl, Esq., Jennifer Handel (Attorney) on behalf of Hampshire County District Attorney (Prosecutor); Aiello, Esq., Erin (Attorney) on behalf of Hampshire County District Attorney (Prosecutor); Eberly, Esq., Katrina Rose (Attorney) on behalf of Victim Rights Law Center (Other interested party)	90	<a href="#">Image</a>
01/04/2022	General correspondence regarding receipt of surrendered passport	92	
01/04/2022	General correspondence regarding Notice regarding foreign passport for criminal defendant	93	
04/04/2022	Defendant 's Motion to amend conditions of release pending appeal	94	<a href="#">Image</a>
04/04/2022	Affidavit of Attorney Kirsten O'Brien in Support of Motion to Amend conditions of release	94.1	<a href="#">Image</a>
04/04/2022	Affidavit of Lisa Beaty in Support of Motion to amend conditions of release	94.2	<a href="#">Image</a>
04/06/2022	Event Result:: Conference to Review Status scheduled on: 04/06/2022 02:00 PM Has been: Held as Scheduled Comments: Defendant present / Defense counsel appeared via Zoom / FTR Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
04/06/2022	Endorsement on Motion to amend conditions of release pending appeal, (#94.0): ALLOWED GPS removed. Mr. Amara is to live with Lisa and Carl Beaty at 346 Owen Avenue, Landsdowne, PA and is not to leave Pennsylvania except for attorney visits and court appearances in Massachusetts. Curfew is removed. All other conditions of release remain in affect. Bail remains at \$2,500.00		<a href="#">Image</a>
04/19/2022	Defendant 's Motion for permission to travel	95	<a href="#">Image</a>
04/19/2022	Affidavit of Attorney O'Brien in Support of Motion for permission to travel	95.1	<a href="#">Image</a>
04/19/2022	Endorsement on Motion for Permission to travel, (#95.0): DENIED While the tryout is within the US, the team is operated out of Canada. The Commonwealth and Probation's concern regarding international travel is reasonable.  Judge: Mason, Hon. Mark D		<a href="#">Image</a>
05/24/2022	Notice of docket entry received from Appeals Court "In Re: #26: Allowed. The appeal is reinstated this date. Appellate proceedings remain stayed to 6/23/22 with status report due then concerning proceedings on remand in the trial court."	96	<a href="#">Image</a>
05/27/2022	Notice of docket entry received from Appeals Court Rescript received . On 4/28/22 "The order allowing the motion for new trial is vacated. The case is remanded for reconsideration, taking into account the memorandum and order of the Appeals Court. (Wolohojian, Henry, Englander, JJ.)" Memorandum and Order Pursuant to Rule 23.0 Attached	97	<a href="#">Image</a>
06/01/2022	Defendant 's Motion for permission to relocate	98	<a href="#">Image</a>
06/01/2022	Affidavit of Attorney Kirsten O'Brien in support of Motion for permission to relocate	98.1	<a href="#">Image</a>
06/01/2022	Endorsement on Motion for permission to relocate, (#98.0): DENIED In light of the Appeals Court's recent ruling, Mr. Amara is ordered to appear on June 16 2022, 2:00 PM for status review. The Commonwealth is to file and serve any motion for modification of bail forthwith and schedule for hearing on that date.  Judge: Mason, Hon. Mark D		<a href="#">Image</a>



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/01/2022	Event Result:: Conference to Review Status scheduled on: 07/06/2022 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Richard J Carey, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
06/06/2022	Commonwealth 's Motion to revoke bail and remand into custody.	99	<a href="#">Image</a>
06/16/2022	Issued on this date:  Mittimus for Sentence (All Charges) Sent On: 06/16/2022 15:03:22	100	<a href="#">Image</a>
06/16/2022	Defendant sentenced:: Revision Date: 06/16/2022 Judge: Hon. Mark D Mason Charge #: 1 RAPE c265 §22(b) State Prison Sentence Not Less Than: 5 Years, 0 Months, 0 Days Not More Than: 5 Years, 0 Months, 1 Days  Charge #: 3 RAPE c265 §22(b) State Prison Sentence Not Less Than: 5 Years, 0 Months, 0 Days Not More Than: 5 Years, 0 Months, 1 Days Served Concurrently Charge # 1 Case 1880CR006  Committed to Souza Baranowski Correctional Center Credits 11 Days  Further Orders of the Court:  DEPARTMENT OF CORRECTIONS TO CALCULATE TIME SERVED		
06/16/2022	Endorsement on Motion to revoke bail and remand into custody, (#99.0): ALLOWED After hearing, allowed. Rulings on the record		<a href="#">Image</a>
06/16/2022	ORDER: on Stayed Sentence	101	<a href="#">Image</a>
06/16/2022	Event Result:: Commonwealth's Motion to revoke bail and remand into custody held in person and via zoom. Defendant present. After hearing- Motion allowed. Defendant to return to DOC custody on original sentence. Mitt issued today for original sentence with 11 days credit (11/24/21 - 12/2/21) DOC to calculate time served. Status 8/18/22 at 2 PM, in person - Attorney O'Brien may appear via Zoom. Supplemental Memoranda to Motion for New Trial to be filed by 7/18/22 by both parties. Conference to Review Status scheduled on: 06/16/2022 02:00 PM Has been: Held as Scheduled Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
06/27/2022	Notice of appeal from sentence to Souza Baranowski Correctional Center filed by defendant	102	<a href="#">Image</a>
06/27/2022	Notification to the Appellate Division sent.		
06/28/2022	Notice of docket entry received from Appeals Court RE#27: Appellate proceedings STAYED to 08/29/2022. Status report due 08/29/2022 concerning the outcome of the post-remand proceedings in the trial court. *Notice.	103	<a href="#">Image</a>
07/15/2022	Appeal for review of sentence entered at the Appellate Division: Originating Court: Hampshire County Receiving Court: Suffolk County Criminal Case Number: 2284AD197-HS ;		
07/18/2022	Hampshire County District Attorney's Memorandum in support of Denial of Defendant's Motion for New Trial after remand by Appeals Court with List of Exhibits I-IV	104	<a href="#">Image</a>
07/19/2022	Defendant 's Motion for additional time to filed supplement	105	<a href="#">Image</a>
07/19/2022	Endorsement on Motion for additional time to file supplement, (#105.0): ALLOWED		<a href="#">Image</a>
07/25/2022	Defendant Kirsten M O'Brien, Esq.'s Supplement in Support of Motion for New Trial After Appeals Court Remand	106	<a href="#">Image</a>
08/09/2022	MEMORANDUM & ORDER:  Decision and Order on Defendant's Motion for New Trial after remand by the Appeals Court  Judge: Mason, Hon. Mark D	107	<a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/09/2022	Endorsement on Motion for new trial , (#68.0): DENIED (See Decision and Order #107)		<a href="#">Image</a>
08/15/2022	Event Result:: Conference to Review Status scheduled on: 08/18/2022 02:00 PM Has been: Canceled For the following reason: By Court prior to date Hon. Mark D Mason, Presiding Staff: Harry Jekanowski, Jr., Clerk of Courts		
08/15/2022	Notice of appeal filed by Defendant from the denial of his Motion for New Trial  Applies To: Amara, Patrick (Defendant)	108	<a href="#">Image</a>
09/06/2022	Notice of Entry of appeal received from the Appeals Court "Re: #28: Appellate proceedings stayed pending assembly of the record and entry of the defendant's appeal from the denial of his motion for new trial. To the extent an additional transcript is necessary, the procedures under Mass. R. A.P. 8 and Trial Court Administrative Order 19-1 should be followed. Status report due 10/6/22 or within 6 days of entry of the related appeal, whichever date is sooner. If a further status report is filed and any transcript remains outstanding, the status report is to include a copy of the Transcript Order form filed with the Office of Transcription Services and the clerk of the trial court, and the date on which the forms were filed. Upon entry of the related appeal, the appellant is to file a motion to consolidate the appeals on both dockets with a proposed due date for appellant's brief and record appendix in the consolidated appeal."	109	<a href="#">Image</a>
09/27/2022	CD of Transcript of 03/25/2021 02:00 PM Motion Hearing received from Paula Pietrella.	110	
10/04/2022	Certification/Copy of Letter of transcript ordered from Court Reporter 03/25/2021 02:00 PM Motion Hearing (ordered 9/2/22)	111	<a href="#">Image</a>
10/04/2022	Appeal: Statement of the Case on Appeal (Cover Sheet).	112	<a href="#">Image</a>
10/04/2022	Notice of assembly of record sent to Counsel	113	<a href="#">Image</a>
10/04/2022	Notice to Clerk of the Appeals Court of Assembly of Record	114	<a href="#">Image</a>
10/05/2022	Notice of Entry of appeal received from the Appeals Court 2022-P-0962	115	<a href="#">Image</a>

**Case Disposition**

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Jury Verdict	05/02/2019	



COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
No. 1880CR00003

COMMONWEALTH

vs.

PATRICK AMARA

**DECISION AND ORDER ON DEFENDANT'S MOTION FOR NEW TRIAL**

Before me is the defendant, Patrick Amara's, Motion for New Trial. Mr. Amara moves for a new trial on the grounds that defense counsel at his 2019 trial was ineffective for failing to read and make use of a statement from one of the Commonwealth's witnesses, disclosed in the ordinary course of discovery, that was inconsistent with the account of events described by the alleged victim. I have considered the trial transcript and exhibits, the parties' written memoranda of law, counsel's oral arguments, and the evidence submitted during the evidentiary hearing held on March 21, 2021. After hearing, Mr. Amara's Motion for a New Trial is **ALLOWED**.

**Background**

Mr. Amara was charged with three counts of rape, all arising out of the same incident in which he was alleged to have raped a female classmate ("H." or "victim") in a bathroom during a party. From April 22, 2019 to April 29, 2019, he was tried before myself and a jury. The jury convicted Mr. Amara on all three charges. I sentenced him to concurrent terms of 5 years to 5 years and a day on two of the indictments, and to 3 years' probation on the third indictment to be served from and after the completion of his sentences of incarceration.

**Facts Adduced at Trial**

In pertinent part, the jury heard evidence as follows:

The victim testified that at the time of the incident, she was a sophomore at the University of Massachusetts at Amherst ("UMass") (Tr.4-24/34-36). On April 30, 2016, H. attended a house party at the Greenleaves apartment complex in Hadley (Tr.4-24/39). She planned to meet with her soon-to-be boyfriend, Khalif Nunnally-Rivera and her best friend, Maija Hall (Tr.4-24/40-41). H. took an Uber to the party at around 9:00pm (Tr.4-24/42, 45). H. testified that when she arrived at the party, she had ingested neither alcohol nor drugs (Tr.4-24/53).

Inside the apartment, H. saw Mr. Amara sitting on a sofa with another male friend of hers (Tr.4-24/54-55). She testified that Mr. Amara appeared very drunk, rocking back and forth, slurring his words, and fading in and out of sleep or consciousness (Tr.4-24/59-60, 115). She decided to sit with Mr. Amara because he was one of the few people she knew at the party and because she was concerned he might have alcohol poisoning (Tr.4-24/60, 109, 117). Mr. Amara said he was going to throw up, stood, and headed toward the bathroom, holding onto the wall (Tr.4-24/62, 64, 108). H. grabbed some paper towels and followed him (Tr.4-24/62, 64, 109, 119). H. testified that once they were both inside the bathroom, Mr. Amara closed the door behind them (Tr.4-24/65).

H. testified that when Mr. Amara walked toward the toilet, she turned away to give him some privacy (Tr.4-24/66-68, 109). Mr. Amara said, "I want to have sex with you. You look so good" (Tr.4-24/66, 69). He started pulling up her dress from behind and, when she turned around, his pants were down to his ankles (Tr.4-24/66, 69, 107). Mr. Amara continued making similar comments, and H. replied, "No, you don't want to do this. No, you're drunk, don't do this" (Tr.4-24/66, 110). With his hands on her back, he pushed her down so she was bent over and then stuck his penis in her anus (Tr.4-24/71-72, 109). He then moved his penis to her vagina

(Tr.4-24/71-72). At first H. told him to stop, but then could not say anything because she froze (Tr.4-24/72).

Mr. Amara's penis was still in H.'s vagina when someone knocked on the door (Tr.4-24/72). He pushed H. into a corner, pulled up his pants, and opened the door an inch (Tr.4-24/72, 111). A male voice outside the door asked if everything was okay (Tr.4-24/74, 111). Mr. Amara replied that everything was fine and shut the door (Tr.4-24/72, 74). When the door closed, H. ran into the corner (Tr.4-24/75). Mr. Amara returned and put his penis inside her again (Tr.4-24, 75-76). H. continued to try to get away, and then did get to the door and ran out of the bathroom and out the front door of the apartment (Tr.4-24/76-77). She had not consented at any point to sex with Mr. Amara (Tr.4-24/107).

On her way out of the apartment, H. encountered Ms. Hall and Ms. Hall's boyfriend, Joshua Odam (Tr.4-24/78). H. grabbed Hall and led her into another bathroom by the front door of the apartment, where H. sat in the shower and told Ms. Hall that Mr. Amara had raped her (Tr.4-24/78-79, 82). H. told Ms. Hall that she did not want to leave because Mr. Nunnally-River was on his way (Tr.4-24/83). H. felt that, if she left, it meant that "it" had happened and that she wanted to get "really drunk" so she could forget all about it (Tr.4-24/83-84). H. returned to the party with Hall and quickly drank a sixteen-ounce bottle of alcohol-spiked punch and got "really drunk" (Tr.4-24/85-86, 123). She then went into the back bedroom, where people were hanging out and smoking marijuana; H. may have smoked some as well (Tr.4-24/87, 128-129). Mr. Amara was not in the bedroom (Tr.4-24/129-130).

About an hour after returning to the party, H. went to use the bathroom by the front door and Mr. Amara followed her in (Tr.4-24/85, 88-89). Mr. Odam followed and said something to Mr. Amara (Tr.4-24/89). H. ran out of the bathroom (Tr.4-24/89). She heard Mr. Amara say

things were “good” (Tr.4-24/89). H. left the apartment and went outside to the curb, where she waited for Mr. Nunnally-Rivera to arrive (Tr.4-24/89-90, 124, 128). Ms. Hall and Mr. Odam left a few minutes before Mr. Nunnally-Rivera arrived (Tr.4-24/90-91). H. returned to the party with Mr. Nunnally-Rivera and stayed until it was broken up, at which point they were driven to Mr. Nunnally-Rivera’s apartment as they had planned (Tr.4-24/93, 126). Mr. Amara left at some time before them (Tr.4-24/92, 127).

On May 4, 2016, H. obtained Mr. Amara’s phone number from a friend and initiated the following text message exchange:

H: Do you remember what you did on Saturday?  
Mr. Amara: Who’s this?  
H: [Name]  
Mr. Amara: Kinda, sorta, lol  
H: What does that mean?  
Mr. Amara: I blacked, lol  
H: What do you remember?  
Mr. Amara: I remember being with you  
H: Being with me?  
Mr. Amara: Yes, bathroom  
H: Do you remember how many times I said no?  
Mr. Amara: Why, what’s up? Lol, nah, I don’t remember anything. I just I blacked out.  
Was you okay?  
H: I want to talk to you in person about it at some point because it has me really fucked up

(Tr.4-24/96-98). Mr. Amara called H. and said he would come over, then texted when he arrived and was in the downstairs lobby (Tr.4-24/99). Mr. Amara was accompanied by Mr. Bowe, while H. was accompanied the friend who had given her Mr. Amara’s phone number (Tr.4-24/99-100). The four of them went into H.’s friends room, after which H. left to find a quieter place to talk to Mr. Amara (Tr.4-24/101-102). From a stairwell near her friend’s room, H. texted Mr. Amara “Come outside lol” (Tr.4-24/102). In the stairwell, H. repeated to Mr. Amara what she had said in her texts, and Mr. Amara apologized, saying he would never want this to happen to anyone he

loved and he would do anything to make it up to her, such as taking her out to dinner to check on her (Tr.4-24/103-104, 131). The conversation lasted approximately ten minutes, after which H. and Mr. Amara returned to H.'s friend's room (Tr.4-24/104).

Ms. Hall testified that when she arrived at the party, H. grabbed her and pulled her into the bathroom (Tr.4-24/140-141). H. told Ms. Hall that she had been forced to have sex with "Pat," who Ms. Hall did not know (Tr.4-24/143-144). H. told Ms. Hall that she had been in the bathroom with Pat because he was drunk and she wanted to make sure he was okay, that he had taken his pants down and forced her to have sex, and that he had not used protection (Tr.4-24/144-145). H. said that she had kept telling "Pat" no (Tr.4-24/144-145). By contrast, Mr. Odam later testified during a UMass student conduct investigation that Ms. Hall told him that H. and Amara had both been drinking and that H. was drunk. He also testified that Ms. Hall told him that H. and Amara were having sex and that when H. asked Amara to stop, he did not stop. These contradictory statements, which were not heard by the jury, are the main focus of Amara's motion for new trial.

After about fifteen minutes, H. and Ms. Hall returned to the party, where they drank and danced together (Tr.4-24/148, 149, 157). Ms. Hall paid attention to H.'s whereabouts in relation to Mr. Amara's whereabouts and was with her throughout the night (Tr.4-24/150, 153, 155-156). Ms. Hall saw Mr. Amara follow H. into the bathroom after she had multiple drinks (Tr.4-24/150). Mr. Odam went and knocked on the bathroom door, saying he needed to use the bathroom, after which the door was opened and both Mr. Amara and H. quickly exited (Tr.4-24/151-153). When Ms. Hall and Mr. Odam left together, H. was waiting for Mr. Nunnally-Rivera to arrive (Tr.4-24/154).

Joshua Odam testified that he had met H. through Ms. Hall and considered her a personal friend (Tr.4-24/164). As a result of something Ms. Hall told him, he kept his eyes on H. throughout the party (Tr.4-24/168, 175). At one point, Mr. Odam saw Mr. Amara follow H. into the bathroom (Tr.4-24/175-177). Mr. Odam put his shoulder between the door and the frame so it could not close, while Mr. Amara attempted to push him out (Tr.4-24/176).

James Bowe and Marquis Young, both football teammates of Mr. Amara, testified that they had seen H. sitting on the couch with Mr. Amara and then going into the bathroom (Tr.4-25/25-26, 4-29/19, 32). Mr. Bowe testified that about five to ten minutes after they went into the bathroom, he knocked on the door three times (Tr.4-25/28, 43). H. peeked her head out and, in response to Mr. Bowe's inquiry, replied everything was okay (Tr.4-25/29). Later, Mr. Bowe saw H. and Mr. Amara leave the bathroom and return to the couch (Tr.4-25/29-30). Nothing appeared amiss, except that H.'s hair was a little messy (Tr.4-25/47, 52). Later, Mr. Bowe saw H. dancing with her friends (Tr.4-25/32). The Commonwealth subsequently introduced into evidence a CD containing a recording of Mr. Bowe's testimony at the UMass proceeding in which Mr. Bowe had testified that after H. and Mr. Amara left the bathroom, they had gone into the back bedroom (Tr.4-29/60-61).

Mr. Young testified that at some point after seeing Mr. Amara and H. enter the bathroom, he also needed to use the bathroom and pushed open the unlocked door a little bit (Tr.4-29/22). He saw the arm of a person with the pink-colored sweatshirt of H.'s sorority pushing the door to shut it (Tr.4-29/22). He believed H. was the only person wearing that sweatshirt on the night of the party (Tr.4-29/51). Later, Mr. Young saw H. and Mr. Amara leave the bathroom and return to the couch (Tr.4-29/23-24, 41-42, 47-48). H. appeared unchanged (Tr.4-29/24). Even later, Mr. Young saw H. and Mr. Amara smoking marijuana in the back room (Tr.4-29/25, 57-58). On

cross-examination, Mr. Young conceded that, at a prior UMass hearing, he had testified that he did not see Mr. Amara return to the couch, and that when he had opened the bathroom door, Mr. Amara was in front of H. and was trying to walk out the door.

Although Mr. Amara did not testify at trial, the Commonwealth introduced into evidence and played for the jury a recording of Mr. Amara's testimony from a UMass hearing conducted on June 21, 2017, pursuant to a student conduct investigation by the university (Tr.4-25/17). At the UMass hearing, Mr. Amara testified that he was very intoxicated, but not blacked out, and that H. offered to take him to the bathroom. He followed H. there. He remembered taking his pants down. H. was next to the sink. He was pulling his pants up when H. walked in front of him and bent over. He was about to urinate. H. did not say she wanted to have sex, but Mr. Amara believed it was consensual because she stood in front of him. He never grabbed or threatened H. When Mr. Bowe knocked on the door, H. responded that everything was fine while Mr. Amara was leaning over the sink. Afterwards, Mr. Amara returned to the couch and H. went into the back room. Mr. Amara later went into the back room and H. was there. Everything seemed fine. The next day, H. texted Mr. Amara and said she had been uncomfortable with what happened. Mr. Amara met with H. and she again told him that she had been uncomfortable. Mr. Amara told her that he has a sister and never wanted to make her feel this way.

#### **Statement of Mr. Odam**

In the course of the student conduct investigation, UMass investigators interviewed numerous other witnesses, including Mr. Odam. A report on Mr. Odam's interview, dated January 27, 2017 ("UMass Report"), was provided to Mr. Amara's counsel in the normal course of discovery. Mr. Amara's trial counsel now admits that he failed to read this report. According to the UMass Report, Mr. Odam recounted arriving at the party with Ms. Hall, noticing H. and

Mr. Amara about ten to fifteen minutes later, and noting that H. did not appear different from how she normally looked. It first recounts the initial conversation between Ms. Hall and Mr. Odam, in which Ms. Hall disclosed that “H. told her something [non-consensual] had happened . . .” Exh. 1, p. 1. It then describes some of Mr. Odam’s actions following that conversation, including Mr. Odam’s intervention in a subsequent encounter between H. and Mr. Odam. *Id.* Finally, it recounts a second conversation between Ms. Hall and Mr. Odam: “Following this encounter, Maija [Ms. Hall] and Josh [Mr. Odam] went outside to talk. It was at this point Maija was able to tell Josh more details about what [H.] told her. Josh shared Maija told him that [H.] and Patrick [Mr. Amara] were both drinking and [H.] was drunk. Josh shared Maija also told him that [H.] and Patrick were having sex and when [H.] asked Patrick to stop he did not.”

Mr. Amara’s counsel also received a statement Mr. Odam gave to Hadley police, dated December 15, 2016 (“Police Report”). In that statement, Mr. Odam wrote: “I remember Maija telling me she was worried about [H.], she had been drinking and Pat had been drinking as well. I remember Maija saying that H. kept saying “No” and Pat didn’t stop.” Trial counsel’s affidavit is silent as to whether he read Mr. Odam’s police statement.

#### **Evidentiary Hearing**

On March 25, 2021, I conducted in evidentiary hearing on Mr. Amara’s motion for new trial. Attorney John Drake was the only witness. Based upon a preponderance of the credible evidence adduced at hearing, and Attorney Drake’s affidavit, I find as follows:

Attorney Drake first met Mr. Amara when he represented him before the Eastern Hampshire District Court on the Harassment Prevention Petition related to his then-pending charges in this matter. Attorney Drake was thereafter appointed to represent Mr. Amara in this



matter. In preparation for trial, Attorney Drake received materials from the District Attorney's Office including the following: transcripts from a Harassment Prevention Petition hearing at the Eastern Hampshire District Court, an audio recording of the UMass disciplinary proceeding, investigative reports and witness interviews conducted by UMass and the Hadley Police Department, grand jury transcripts, and grand jury exhibits. Attorney Drake also engaged a private investigator. Following the trial and Mr. Amara's sentencing, Attorney Drake retained all his discovery on this case and transmitted a copies to Mr. Amara and to Mr. Amara's appellate counsel. Attorney Drake's trial notebook referred to a statement given by Mr. Odam during the UMass investigation.

Attorney Drake acknowledged, in his testimony during the evidentiary hearing, that Mr. Odam's statement contradicted H.'s testimony at trial that she was sober. He also stated that believed that Mr. Odam's statement, that Maija told him H. and Mr. Amara were having sex and he wouldn't stop, was a significant statement which went to the issue of consent and whether H. was sober at the time of the alleged rape. After Attorney Drake signed the affidavit filed with Mr. Amara's motion for new trial, he located copies of Mr. Odam's UMass statement and Mr. Odam's statement to the Hadley Police Department in his trial preparation file. Although Attorney Drake does not have a specific recollection of reading either statement, he believes he must have done so because they were in his trial notebook in a section relating to Mr. Odam. Attorney Drake acknowledged that the statements would have been useful to him in his defense of Mr. Amara. He also acknowledged that what Mr. Odam told UMass and what Ms. Hall told him constituted hearsay; but that he believed Mr. Odam's statement would have been admissible in impeaching H., Mr. Odam and Ms. Hall. He agreed the UMass Report does not state whether

H. was drinking before or after the alleged rape. Finally, Attorney Drake would have, at a minimum, discussed Mr. Odam's statement with Mr. Amara.

### **Discussion**

#### **A. Motion for New Trial Standard**

A motion for a new trial is addressed to the sound discretion of the judge, *Commonwealth v. Smith*, 381 Mass. 141, 142 (1980), and the judge's disposition will not be reversed unless it is manifestly unjust, *Commonwealth v. Schand*, 420 Mass. 783, 787 (1995), or unless the trial is infected with prejudicial constitutional error, *Commonwealth v. Stewart*, 383 Mass. 253, 257 (1981). "[I]t is within a judge's discretion, applying a 'rigorous standard,' to grant such a motion at any time 'if it appears that justice may not have been done.'" *Commonwealth v. Gordon*, 82 Mass. App. Ct. 389, 394 (2012), quoting *Commonwealth v. Williams*, 71 Mass. App. Ct. 348, 353 (2008).

The fundamental question of whether the defendant received a fair trial "can only be determined on a case by case basis." *Brescia*, 471 Mass. at 389-90, quoting *Commonwealth v. Lombardi*, 378 Mass. 612, 616 (1979). "A strong policy of finality limits the grant of new trial motions to exceptional situations, and such motions should not be allowed lightly." *Gordon*, 82 Mass. App. Ct. at 394, citing *Commonwealth v. Lopez*, 426 Mass. 657, 662-663, 690 (1998). "[A] defendant is entitled to a fair trial, but not a perfect one, for there are no perfect trials" (internal quotations and citations omitted). *Brescia*, 471 Mass. at 391.

Where a motion for new trial is based on an assertion of ineffective assistance of counsel, the court follows the familiar two-part analysis set forth in *Commonwealth v. Saferian*, 366 Mass. 89 (1974). Mr. Amara has the burden to demonstrate: 1) that "there has been serious incompetency, inefficiency, or inattention of counsel – behavior of counsel falling measurably

below that which might be expected from an ordinary fallible lawyer,” and 2) that counsel’s failing “has likely deprived the defendant of an otherwise available, substantial ground of defence.” *Id.* at 96.

### **B. Performance of Counsel**

In assessing the performance of counsel, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” *Strickland v. Washington*, 466 U.S. 668, 689 (1984). Trial counsel concedes, in his affidavit, that he failed to review the UMass Report containing Odam’s statement to school investigators. Where an attorney has failed to review discovery, the defendant has the burden to demonstrate that such review would have been helpful. See *Commonwealth v. Lynch*, 98 Mass. App. Ct. 1113 at \*2 (2020) (Rule 1:28 decision) (denying motion for new trial in part because “defendant has produced no evidence . . . that review of discovery would have been helpful”), citing *Commonwealth v. Barry*, 481 Mass. 388, 406 (2019); *Commonwealth v. Durling*, 93 Mass. App. Ct. 1119 at \*3-\*4 (2018) (Rule 1:28 decision) (counsel’s failure to obtain and review booking video, in hopes of having it excluded, not a “sound strategy”). However, there is a basic obligation on the part of a “reasonably competent attorney . . . to become familiar with the discovery materials produced by the Commonwealth” *Commonwealth v. Alcide*, 472 Mass. 150, 160 (2015). A defendant is “denied a fair trial” when counsel “fail[s] to investigate and develop the evidence which could have supported the defendant’s defense and which could have raised a reasonable doubt in the minds of the jurors.” *Commonwealth v. Farley*, 153, 157 (2000).

In this case, the gravamen of Mr. Amara's defense was that although a sexual encounter had occurred, it was consensual on the part of H. As such, the credibility of H. and of Ms. Hall, the first complaint witness, were critical factors in the prosecution's case, and any evidence that tended to cast doubt on that credibility accordingly had at least the potential to raise reasonable doubts in the minds of jurors. There is no question that Mr. Odam's statement in the UMass Report had such a tendency. For example, although H. denied that she had consumed any alcohol prior to her encounter with Mr. Amara, Mr. Odam stated that Ms. Hall told him that H. was drunk. Mr. Odam also stated that Ms. Hall told him that H. and Mr. Amara "were having sex," implying that the encounter began consensually and contradicting H.'s testimony that Mr. Amara attacked her. Therefore, had trial counsel familiarized himself with the UMass Report, it would have been of at least some use in calling into question H.'s and Ms. Hall's credibility.

The Commonwealth argues that even though trial counsel stated in his affidavit, and testified at the evidentiary hearing, that he would have used the UMass Report in such a manner, he made no such similar statements regarding the Police Report, which contains substantially similar information. It is clear from the record, however, that trial counsel also failed to use the Police Report to contest H.'s or Ms. Hall's credibility. Moreover, the fact that trial counsel apparently overlooked the impeachment value of *both* the UMass Report and the Police Report does not strengthen the Commonwealth's argument that he performed to a professionally reasonable standard. Moreover, as Amara points out, even if Attorney Drake had read both the UMass Report and the Police Report and decided not to use them, that failure was "manifestly unreasonable" and therefore would still give rise to an ineffective assistance claim. See *Commonwealth v. Haley*, 413 Mass. 770, 777-778 (1992), quoting *Commonwealth v. Sielicki*,

391 Mass. 377, 379 (1984) (tactical decisions by counsel may still amount to ineffective assistance if “manifestly unreasonable when undertaken”).

**C. Effectiveness of Defense Asserted**

Even if trial’s counsel’s performance is determined to be deficient, under the second prong of *Saferian* the defendant still has the burden to prove that the deficiency deprived him of an otherwise available, substantial ground of defense. In *Durling*, the Appeals Court addressed a case in which trial counsel unwisely failed to obtain and review a booking video of the defendant, who was charged with driving under the influence. 93 Mass. App. Ct. 1113 at \*1. The video would have shown that the booking officer misheard the defendant as saying, “we’ve had a few,” and that the defendant actually said “he’s had a few” referring to a third party, thus refuting testimony that the defendant admitted to drinking. *Id.* at \*5. The Appeals Court held that this evidence was not sufficient to meet the second prong of *Saferian* because any argument that the defendant did not consume alcohol “stands in direct counterpoint to the arresting officer’s observation of an overwhelming odor of alcoholic beverage emanating from the defendant after his arrest and before booking” (quotations omitted). *Id.* at \*6. In other words, the defendant’s “self-serving statements” were of minimal evidentiary value and would have provide the defendant no benefit because the trial judge “was within her discretion to credit the officer’s testimony.” *Id.*

Put more succinctly, even where counsel has erred gravely in failing to develop relevant evidence, such evidence must still have been capable of “rais[ing] a reasonable doubt in the minds of the jurors.” *Farley*, 432 Mass. at 157. Where “evidence of [the defendant’s] guilt was overwhelming,” on the other hand, “[o]ne can speculate that with superior effort or advocacy . . .

the case against the defendant might have been made to appear less formidable, but that would be empty conjecture” insufficient to warrant a new trial. *Saferian*, 366 Mass. at 93.

The Commonwealth first argues that even if failing to read the UMass Report “signified performance of less than an average attorney,” Opp. at 12, that failure was immaterial because the information in the UMass Report was cumulative of other information contained in Mr. Odam’s police statement, which trial counsel did not admit failing to read. This argument misses the point: the crucial issue is whether counsel’s failure to use either the UMass Report or Mr. Odam’s police statement to examine Mr. Odam – and possibly Ms. Hall as well – on the issue of the victim’s sobriety, deprived Mr. Amara of a substantial ground of defense, specifically the argument that the victim was intoxicated, made a poor but consensual decision to engage in sex with Mr. Amara, and later regretted or rethought that decision.

In this regard, the Commonwealth’s stronger argument is that the UMass Report could only have been used to impeach Ms. Hall and was contradicted by other, substantial evidence in the case, such as Mr. Odam’s statement that the victim did not appear to be drinking, thus giving the UMass Report minimal evidentiary value. “Failure to impeach a witness does not, standing alone, amount to ineffective assistance.” *Commonwealth v. Jenkins*, 458 Mass. 791, 805 (2011). In *Jenkins*, the Supreme Judicial Court held that failing to impeach a witness with discrepancies between his grand jury testimony and trial testimony, regarding statements made to the defendant, was a reasonable strategic decision because it would have undercut by additional remarks in the witness’s grand jury testimony that would have harmed the defendant’s case. *Id.* at 805-806. It further held that failing to impeach a witness with discrepancies between his accounts of other, corollary incidents not involving the charged conduct, and with only one of his four prior criminal convictions, did not constitute ineffective assistance because they were

“minor inconsistencies” that did not involve any of the facts actually at issue, only related to the witness’s general credibility, and would have served to reinforce other, more harmful testimony. *Id.* at 806-807. Such arguments hold their greatest force when the impeachment evidence that counsel failed to utilize is merely cumulative of other impeachment evidence successfully introduced at trial. See *Commonwealth v. Fisher*, 433 Mass. 340, 357 (2001) (“absent counsel’s failure to pursue some obviously powerful form of impeachment available at trial, it is speculative to conclude that a different approach to impeachment would likely have affected the jury’s conclusion”).

There are rare cases, however, in which unintroduced impeachment evidence may be so substantial as to warrant a new trial. The Supreme Judicial Court addressed one such case in *Commonwealth v. Liebman*, 388 Mass. 483 (1983) (*Liebman II*).<sup>1</sup> In *Liebman II*, the defendant had been denied access to the Federal grand jury testimony of two key witnesses, one of which revealed “serious inconsistencies” once disclosed. *Id.* at 485. Specifically, although the witness had testified at trial to being threatened to prevent her from giving testimony, she twice denied any such threats before the grand jury. *Id.* at 485. Moreover, the witness “told the grand jury that she first learned of the robbery several days after its occurrence, but at trial her testimony revealed that she knew about the planned robbery before it happened and that she knew about its occurrence and who was involved promptly after the event.” *Id.* at 486. In granting a new trial, the Court explained, “Where the Commonwealth’s case depends so heavily on the testimony of a witness we believe that the jury might reasonably have been influenced by this evidence which seriously undermines the credibility of that witness and that a reasonable doubt that did not otherwise exist might have been created in the jurors’ minds.” *Id.* at 489. The Court

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<sup>1</sup> Although *Liebman II* involved a motion for new trial based on improperly withheld *Brady* material, the Court’s analysis is helpful in determining the weight to be given to the unused UMass Report.

acknowledged that using the grand jury minutes might have allowed the introduction of some adverse evidence, but stated, “the fact remains that the serious inconsistencies between [the witness’s] grand jury testimony and her trial testimony also ‘might have’ caused the jury reasonable doubt about a case that heavily depends on [her] testimony.” *Id.*

Here, the evidence against Mr. Amara was far from “overwhelming.” See *Saferian*, 366 Mass. at 93. As in *Liebman*, the Commonwealth’s case here rested almost entirely on H.’s credibility and that of the first complaint witness, Ms. Hall. The UMass Report tended to show not only that there were inconsistencies in H.’s account of the relevant night, but specifically that the inconsistencies tended to make H. a more sympathetic victim as they developed. For example, had Ms. Hall been cross-examined regarding her statements to Mr. Odam, the jury might reasonably have concluded that H. had initially admitted drinking to her friend, only to later deny it under oath, which would have seriously undermined her credibility. Moreover, such evidence would have bolstered Mr. Amara’s defense that H. had consented to sex only to regret it afterwards.

The Commonwealth argues that Ms. Hall’s statement that H. was drinking, as recounted in the UMass Report of Mr. Odam’s statement, does not contradict Ms. Hall’s testimony at trial because it is undisputed that H. was drinking and became intoxicated after the rape occurred. However, reading the UMass Report as a whole, it is clear that Ms. Hall’s statement was made in the context of her informing Mr. Odam of additional details of the rape that H. had disclosed to her. That is, Ms. Hall’s statement regarding H. and Mr. Amara’s drinking was not a freestanding assertion in the UMass Report; rather, it was part of the UMass Report’s description of the additional details regarding H.’s account of the rape that Ms. Hall told Mr. Odam about later that




same evening. In this context, it cannot fairly be read as describing the drinking that H. and Mr. Amara engaged in after Ms. Hall and Mr. Odam arrived at the party.

The Commonwealth also argues that neither the UMass Report nor the Police Report would have been admissible directly as evidence of H.'s intoxication, because they contain only hearsay. This argument misses the mark – the critical issue is not whether H. was intoxicated, but whether inconsistencies in her testimony, compared to Ms. Hall's recollection of events on the night of the incident, undermine H. and Ms. Hall's credibility. While failing to impeach a witness is rarely grounds for a new trial itself, in this case the witnesses' credibility was so central to the Commonwealth's case that trial counsel's failure to even familiarize himself with statements that could have undermined that credibility deprived Mr. Amara of a substantial ground of defense and, ultimately, denied him a fair trial.

**ORDER**

For the foregoing reasons, Patrick Amara's Motion for a New Trial is **ALLOWED**.

  
Mark D Mason  
Justice of the Superior Court

DATED: May 4, 2021

107.

**COMMONWEALTH OF MASSACHUSETTS**

**HAMPSHIRE, ss.**

**SUPERIOR COURT  
CRIMINAL ACTION  
No. 1880CR00006**

**COMMONWEALTH**

**vs.**

**PATRICK AMARA**

**DECISION AND ORDER ON DEFENDANT'S MOTION FOR NEW TRIAL  
AFTER REMAND BY THE APPEALS COURT**

Before me is the defendant, Patrick Amara's, Motion for New Trial. Mr. Amara originally moved for a new trial in December 2020, on the grounds that defense counsel at his 2019 trial was ineffective for failing to read and make use of a statement from one of the Commonwealth's witnesses that was inconsistent with the alleged victim's account of events. After an evidentiary hearing, I issued a memorandum of decision and order in April 2021 allowing the motion for new trial. The Commonwealth appealed and, on April 28, 2022, a panel of the Appeals Court vacated the April 2021 order and remanded the matter for further consideration of several factors, particularly whether the potentially inculpatory portions of the statement outweighed its value as impeachment evidence. After reconsideration, and in light of the guidance provided by the Appeals Court, the motion for new trial is **DENIED**.

**Background**

Mr. Amara was charged with three counts of rape, all arising out of the same incident in which he was alleged to have raped a female classmate ("H." or "victim") at the University of Massachusetts ("UMass"). At trial, H. testified that she and Mr. Amara were at a party, that Mr. Amara went to the bathroom to throw up because he was drunk, and that she went into the

bathroom to check on him. H. further testified that in the bathroom, Mr. Amara stated that he wanted to have sex with her, started pulling up her dress, pushed her down, and penetrated her with his penis. At first H. told him to stop, but then could not say anything because she froze. H. was eventually able to get away and run to the door of the apartment where the party was being held. H. testified that she had not consented at any point to sex with Mr. Amara.

On her way out of the apartment, H. told her friend, Maija Hall, that Mr. Amara had raped her. H. then decided to return to the party because she wanted to get “really drunk” and forget about the rape. Ms. Hall’s boyfriend, Joshua Odam, was also present and was subsequently interviewed during a UMass student conduct investigation into the rape.

A report on Mr. Odam’s interview, dated January 27, 2017 (“UMass Report”), was provided to Mr. Amara’s counsel in the normal course of discovery. According to the report, Mr. Odam arrived at the party with Ms. Hall, noticed H. and Mr. Amara about ten to fifteen minutes later, and noticed that at that time, H. did not appear different from how she normally looked. The report first recounts the initial conversation between Ms. Hall and Mr. Odam, in which Ms. Hall disclosed that “H. told her something [non-consensual] had happened . . . .” It then describes some of Mr. Odam’s actions following that conversation, including Mr. Odam’s intervention in a subsequent encounter between H. and Mr. Amara. Finally, it recounts a second conversation between Ms. Hall and Mr. Odam: “Following this encounter, Maija [Ms. Hall] and Josh [Mr. Odam] went outside to talk. It was at this point Maija was able to tell Josh more details about what [H.] told her. Josh shared Maija told him that [H.] and Patrick [Mr. Amara] were both drinking and [H.] was drunk. Josh shared Maija also told him that [H.] and Patrick were having sex and when [H.] asked Patrick to stop he did not.”

Mr. Amara's trial counsel, Attorney John Drake, submitted an affidavit and testified at an evidentiary hearing before me. He stated that after he signed the affidavit filed with Mr. Amara's motion for new trial, he located copies of Mr. Odam's UMass statement in his trial preparation file. Attorney Drake further testified that he did not have a specific recollection of reading either statement, but he believed he "must have" done so because they were in his trial notebook in a section relating to Mr. Odam. He acknowledged that the statements would have been useful to him in his defense of Mr. Amara, and stated that he believed Mr. Odam's statement would have been admissible in impeaching H., Mr. Odam, and Ms. Hall. Finally, Attorney Drake testified that he would have, at a minimum, discussed Mr. Odam's statement with Mr. Amara.

### Discussion

In remanding this matter for reconsideration, the Appeals Court first pointed out that although I credited Attorney Drake's testimony that he "must have" read the UMass report (because it was in his trial notebook), I analyzed Mr. Amara's ineffective assistance claim on the issue of whether failing to read the report fell measurably below counsel's expected performance, rather than the issue of whether failing to discuss the report with Mr. Amara fell below that standard. See *Commonwealth v. Saferian*, 366 Mass. 89, 96 (1974). To clarify, it was evident to me from Attorney Drake's testimony that if he had read the UMass report at one point – as he stated he "must have" – he had forgotten about it before the trial, or at least by the time H. and Ms. Hall testified. In other words, it seemed apparent that Attorney Drake had not weighed the pros and cons of the UMass report and that he did not make a strategic decision to forego using it as impeachment evidence; rather, it was simple neglect.

That being said, however, it is true that the UMass report is a "double-edged sword" (as the Appeals Court put it). Mr. Amara claimed that H. consented to sex and later regretted it; Mr.

Odam's account of the incident bolsters that defense insofar as Mr. Odam stated Ms. Hall had told him H. and Mr. Amara "were having sex," which suggests a consensual encounter. At the same time, however, the fact that Mr. Odam went on to state that Ms. Hall told him H. had withdrawn her consent, and that Mr. Amara failed to stop, would itself support a conviction of rape. Likewise, I initially concluded that Mr. Odam's statements in the report itself could not fairly be read as describing the drinking that H. and Mr. Amara engaged in after Ms. Hall and Mr. Odam arrived at the party. At the same time, it is possible that if the report had been introduced at trial, Mr. Odam would have clarified any ambiguity in a manner unfavorable to the defense, so as to refute the suggestion that (contrary to H.'s testimony and consistent with Mr. Amara's) H. was drinking before the rape.

As I stated in my original memorandum of decision and order, in this case, the gravamen of Mr. Amara's defense was that although a sexual encounter had occurred, it was consensual on the part of H. As such, the credibility of H. and of Ms. Hall, the first complaint witness, were critical factors in the Commonwealth's case. Because I presided over the trial, my assessment on this point was based, in substantial part, on my observations of H. during her testimony – not only what she said, but her attitude, tone, appearance, and overall demeanor.


The importance of H.'s credibility informed my view of the UMass report's value as impeachment evidence, in considering Mr. Amara's original motion for new trial. "Where the Commonwealth's case depends so heavily on the testimony of a witness," a failure to impeach that witness warrants a new trial if "the jury might reasonably have been influenced by . . . evidence which seriously undermines the credibility of that witness," such that "a reasonable doubt that did not otherwise exist might have been created in the jurors' minds." *Commonwealth v. Liebman*, 388 Mass. 483, 489 (1983). Because the UMass report was evidence that might have

significantly undermined H.'s credibility and also corroborated Mr. Amara's account of events, its impeachment value should have been carefully weighed and considered by the defense.

Nonetheless, the fundamental question—as the Appeals Court stated—is whether “better work might have accomplished something material for the defense.” *Commonwealth v. Johnson*, 435 Mass. 113, 123 (2001), quoting *Commonwealth v. Satterfield*, 373 Mass. 109, 115 (1977). Although the UMass report could have strengthened Mr. Amara's defense, it could also have opened the door for Mr. Odam to clarify his statements to the UMass investigators in a manner unfavorable to the defense, and might have provided additional evidence supporting a conviction for rape. Moreover, the weight of the report is diminished by the fact that Mr. Odam provided not even second-, but third-hand information: information that originated with H., which was relayed to Ms. Hall, which in turn was relayed to Mr. Odam. Upon reconsideration, I cannot conclude that Mr. Amara has met his burden to show that introducing the report would have been a net benefit to his defense. Therefore, the motion for new trial must be denied.

#### **ORDER**

For the foregoing reasons, after remand and reconsideration, Patrick Amara's Motion for a New Trial is **DENIED**.

  
Mark D. Mason  
Justice of the Superior Court

DATED: August 9, 2022